

September 20, 2007

Mr. Tony Korwin  
10 Calle Tortuga  
Las Luz, NM 88337-9328

Re: Determination of Open Meetings Act complaint of Alamogordo Public Schools

Dear Mr. Korwin:

This determination addresses the complaint that you filed with our office alleging that the Board of Education of the Alamogordo Public Schools ("Board") may have violated the Open Meetings Act ("OMA"), NMSA 1978, Sections 10-15-1 through 10-15-4. According to your letter, the Board violated the OMA because it formed a rolling quorum to discuss in private: (a) the decision to place Superintendent Philip Knight on administrative leave; (b) the decision to hire a new superintendent and (c) the decision to eliminate block schedules (involving how many class periods occur daily at high school). I have reviewed: (1) your May 8, 2007 letter with seven attached emails<sup>1</sup>; (2) the Board's Open Meetings Act Resolution; (3) the Board's January 16, February 20, March 1, 6, 14, 20, April 9 and May 15, 2007 meeting minutes; (4) the Board's June 28, 2007 response letter; and (5) the OMA. As described in more detail below, it appears that the Board complied with the OMA.

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<sup>1</sup> The seven emails accompanying the complaint were: (1) March 7, 2007, e-mail from Ms. Brenda Guin to Board Members Susan Medina, Alan Rickman, Joe Halbig, and Rhonda Cross inviting them to a PTA meeting; (2) March 1, 2007, e-mail from Ms. Brenda Guin to Board Members Susan Medina, Alan Rickman, Joe Halbig, and Rhonda Cross on air quality issues; (3) undated e-mail from Alan Rickman (with no listing of its recipients) stating he will try to attend the PTA meeting; (4) February 27 (1:10 pm) e-mail from Board Member Susan Medina to Tony Korwin, Dr. Knight, Ms. Lora Peachley (Dr. Knight's staff member), Board Members Alan Rickman, Joe Halbig, Rhonda Cross, and Irene Pittman regarding members' use of school district computer laptops; (5) February 27 (11:31 am) e-mail from Tony Korwin to Superintendent Philip Knight and Board Members Susan Medina, Alan Rickman, Joe Halbig, Rhonda Cross, and Irene Pittman regarding members' use of school district computer laptops; (6) February 27 (10:50 am) e-mail from Board Member Susan Medina to Tony Korwin, Dr. Knight, Ms. Lora Peachley (Dr. Knight's staff member), Board Members Al Rickman, Joe Halbig, Rhonda Cross, and Irene Pittman asking for input from board members on whether the expenditure of replacement laptops needed to be approved; and (7) undated e-mail from Alan Rickman (with no listing of its recipients) commenting on expenditure of replacement laptops.

The OMA states: "[a]ll meetings of a quorum of members of any board . . . of any municipality discussing public business are declared to be public meetings open to the public at all times." NMSA 1978, § 10-15-1(B). According to your letter, the Board violated this provision when a rolling quorum of the Board discussed in private the decision to terminate Mr. Knight. Your letter alleged the Board voted on Mr. Knight's dismissal on March 1, 2007 "without any discussion, comments or reason in open meeting." Your letter further alleged: "And while it is in their power to select a new person [superintendent] . . . In their emails to each other, they have already identified a person to hire, but are going to set up community events that lead the public at large into thinking they have input." Finally, your letter alleged: "[O]n March 21, 2007, the board voted to eliminate block scheduling at the high school. In fact earlier in the meeting, even before there was a motion or discussion, board member Alan Rickman, made public comments to the effect that it was the consensus of the board that the [current] schedule was not working."

The Board responded generally to the allegations of improper e-mail communications:

Although some Board members may have used e-mails to communicate with fellow Board members, the communications were not intended to circumvent the provisions of the OMA by deliberating or making decisions about the three specific topics listed in the complaint through e-mail communications. Rather, the e-mails were (1) private communications between two Board members, constituting less than a quorum of the Board, (2) general information to Board members containing no discussion, deliberation or decision-making communications, (3) requests for agenda items, (4) communications to determine convenient dates and times for Board meetings, (5) copies of e-mails received by Board members from teachers, counselors, or community members and/or responses to non-Board members with copies shared to other Board members, (6) copies of e-mail requesting information from other school districts with copies to other Board members, (7) information received by a Board member from a non-Board member and shared with Board members, or (8) an expression of appreciation and encouragement from the Board President to all Board members of their work.

The Board also responded to the specific allegation regarding Mr. Knight's dismissal:

Shortly after the [February 2007 school board member] election, Dr. Philip Knight announced publicly that he would resign his position as Superintendent on June 30, 2007 stating that he was not sure he could work with the newly elected Board members. The Board took action on February 20, 2007 to accept Dr. Knight's resignation [but the] motion and vote failed. On March 1, 2007, the first day in office for the newly elected Board members at a duly called special meeting [t]he Board then took action, by a vote of four (4) in favor and one (1) against, to place Dr. Philip Knight on administrative leave with pay until his effective date of resignation on June 29, 2007.

See also Regular Meeting Minutes, "Other Items of Business" (Feb. 20, 2007).

The Board also responded to the allegation regarding Mr. Knight's replacement:

Upon Dr. Knight being placed on administrative leave with pay until the effective date of his resignation, Clarissa (õCrissö) Johnson, Associate Superintendent for Student Personnel and Federal Programs, became the Interim Superintendent. On April 9, 2007, the Board initiated a work session [meeting] to discuss the specific goals for the position of the Superintendent. At a duly called meeting on May 15, 2007, the Board discussed limited personnel matters by discussing the appointment of Interim Superintendentí. During the Board's regular meeting of May 15, 2007, the Board voted unanimously to í replace her with Michael Harris, one of the four finalist applicants for the position, effective immediately.

See also Work Session Meeting Minutes (Apr. 9, 2007); Special Meeting Minutes, "Interim Superintendent's Position" (May 15, 2007).

Finally, the Board responded to the allegation regarding the change in scheduling:

During the election campaign period, the issue of block scheduling became a controversial campaign topic. Candidates Allan Rickman and Rhonda Cross made it known through their election campaigns that they opposed block scheduling and would be willing to study the issue for possible changesí. [They] were elected on Februaryí. In addition to the work session on March 1, the Board held work session on March 6 and March 14, 2007 [to study the issue]í. At its regular meeting of March 20, 2007, the Board accepted additional public comments about the í block schedule and took action on a motion [on the matter].

See also Work Session Meeting Minutes (Mar. 1, 6 and 14, 2007); Regular Meeting Minutes, "Public Input" (Mar. 20, 2007).

The Board's letter concluded:

Although Board members deny having violated the OMA through the use of e-mail communications, Board members realize that careless use of e-mail could result in unintentional violations of the OMA. Therefore, Board members, in an abundance of caution, have discontinued the practice of using e-mail to communicate with one another. All Board members attended the New Mexico School Board Association Summer School Law Conference in June and participated in training sessions on compliance with the OMA.

Based on the information available to us at this time, we are unable to conclude that the Board violated OMA as alleged in the complaint. We could not substantiate that a rolling quorum of the Board's members communicated outside a public meeting through e-mail about the three issues stated in your complaint. Instead, it appears the three matters were properly discussed in public meetings in advance of Board final action.

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Although we did not determine that the Board violated OMA, we appreciate your bringing this matter to our attention. If you have questions about the specific matters addressed in this letter, or about the Open Meetings Act in general, please let me know. We have enclosed the Board's response letter for your review.

Sincerely,

Zachary Shandler  
Assistant Attorney General

Cc: Susan Medina, Board President  
(C/O Ramon Vigil, Cuddy, Kennedy, Albetta & Ives LLP)

Enclosure